Strategic Developments Under the FLSA

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The Fair Labor Standards Act

The FLSA Creates 5 Major Requirements:

- 1. Payment of a minimum wage
- 2. Payment of overtime wages to covered employees for hours worked in excess of 40 per week
- 3. Equal pay for males and females doing equal work
- 4. Restrictions on employment of child labor
- 5. Certain recordkeeping with respect to wage and hours

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Focus

Recent Focus of FLSA Actions:

- Whether an employee has received all overtime to which he/she is entitled
- Whether an employee is properly exempted under White Collar exemptions or as Independent Contractor
- Applicability of Motor Carrier Exemption

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Changes to Overtime: Who Will Qualify for the Overtime Exemption?

- Three Traditional White Collar Exemptions: Executive, Administrative and Professional
 - All require salary of not less than \$455 per week.
 - · Primary duties tests for each.
- Highly Compensated Employee Exemption
 - Total annual compensation of at least \$100,000.00.
 - Customarily and regularly perform at least one primary duty of a White Collar exemption.
- Department of Labor Released new "Final Rule" on salary requirements May 18, 2016

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Changes to Overtime: Who Will Qualify for the Overtime Exemption? – Cont.

- Three Major Changes:
 - 1. Raised the salary level for exempt white-collar employees from \$455 per week (\$23,660 per year) to **\$913 per week** (**\$47,476 per year**).
 - Raised the total annual compensation needed for the highly compensated employee (HCE) exemption from \$100,000 to \$134,004.
 - Automatic raises in salary and compensation levels every three years to maintain the levels at the 40th percentile of earnings of full-time salaried workers in the lowest wage Census Region for the white-collar exemptions, and 90th percentile for the highly compensated employee exemption.

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Changes to Overtime: Who Will Qualify for the Overtime Exemption? – Cont.

- Importantly, the Final Rule made no changes to the "duties" tests for exempt employees.
- Final Rule was set to go into effect on December 1, 2016....

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